IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9235 OF 2007

Chandrakant Malangaonkar .. Petitioner

Versus

Shrikant Gangadhar Malangaonkar

and Ors. .. Respondents

Mr.S.S.Patwardhan for petitioner

Mr.Amil Sale for respondent No.4.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th December 2007

P.C.

. This petition is challenging an order passed by the lower appellate court dismissing

Misc.Civil Appeal No.36 of 2007 which was directed against the order passed by the Civil Judge, Junior Division, Islampur below Exh.43 in R.C.S.No.183 of 2007.

2. The original plaintiff- petitioner had challenged the order of the trial court before the lower appellate court. The trial court held that there is no prima facie case in favour of petitioner for grant of temporary injunction. Further, the balance of convenience is also not in his favour and irreparable loss would be caused to the concerned defendant.

3. The prima facie material that has been brought before the courts below has demonstrated that the petitioner plaintiff had earlier applied for temporary injunction against defendant No.1. However, that appeal was withdrawn by him and now he is concerned with the alienation by the original defendant No.1 in favour of original

defendant No.4. The sale deed is of 5th April 2007 and the suit is filed on 7th April 2007. It has come on the record that prima facie defendant No.1 is in separate possession of the suit property. It is that portion which he has sold to original defendant No.4. The submission was that there is no partition by metes and bounds and until the property is in common possession, no stranger can be inducted in it. However, it has come on record that the subject land/property was partitioned in 1981. The dispute raised by the present petitioner plaintiff is that the partition deed of 1981 is confined to the share of brother Achyut but remaining three brothers continue to own the property jointly. However, prima facie material placed on record shows that each brother raised separate loans and constructed upon the portion. In such circumstances, the presumption was drawn that they were in separate possession. It is such portion which has been alienated in favour of

defendant No.4. In these state of affairs, I do not see any reason to interfere with the prima facie findings based as they are on the materials produced. The orders under challenge are not vitiated by any error apparent nor are perverse. Petition dismissed.

4. However, original defendant No.4 is directed not to part with possession or create third party rights in any manner in the suit property during the pendency of the suit. The trial court to dispose of the suit uninfluenced by any observations made by it so also the higher courts but on the basis of oral and documentary evidence.

(S.C.Dharmadhikari, J)